

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JAMES KELLY

Plaintiff,

VS.

MONTGOMERY LYNCH &
ASSOCIATES, INC.

Defendant.

CASE NO. 1:07-CV-919

ORDER & OPINION
[Resolving Doc. No. 114-1]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On June 18, 2008, Plaintiff James Kelly moved this Court for an award of costs and attorney fees pursuant to the federal Fair Debt Collection Practices Act (“FDCPA”), [15 U.S.C. § 1692](#) *et seq.*, and the Ohio Consumer Sales Practice Act (“OCSPA”), [O.R.C. § 1345.01](#) *et seq.* [Doc. [114-1](#).] With his motion, Plaintiff Kelly seeks to recover a total of \$126,661.29 in attorney fees and \$2,881.29 in costs. [[Id. at 4](#).] In support of the petition, the Plaintiff argues that he is due attorney fees and costs according to the statutes, calculates the fees by the number of hours expended times the attorneys’ rates, and enumerates the costs expended. Defendant Montgomery Lynch and Associates, Inc., (“Montgomery Lynch”) opposes the motion. [Doc. [115-1](#).] Although conceding that the Plaintiff should recover attorney fees and costs according to the settlement reached in the case, Montgomery Lynch argues that the requested amount is unreasonable. [[Id. at 2](#).] Plaintiff Kelly has replied to the opposition. [Doc. [117-1](#).]

On September 3, 2008, this Court referred the motion to Magistrate Judge William H. Baughman, Jr., for a Report and Recommendation. [Doc. [116](#).] On September 18, 2008, Magistrate Judge Baughman filed a Report and Recommendation that recommended the Court grant in part the

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Plaintiff's motion for an award of fees and costs. [Doc. [118](#).] The Magistrate Judge found that the hours expended by Plaintiff Kelly's attorneys were reasonable, especially considering comparable hours expended by defense counsel. [[Id. at 15](#).] The Magistrate Judge also found that the local Plaintiff's attorney, Attorney Icove, charged reasonable hourly rates, based on his experience and expertise in consumer class actions. [[Id. at 16](#).] However, that conclusion led Magistrate Judge Baughman to find that Attorney Bragg, out-of-forum counsel, was unnecessary, and thus only due the same hourly rate as local counsel. [[Id. at 18-19](#).] Magistrate Judge Baughman also made some minor findings concerning the hours and rates of associate counsel and paralegal support, and costs expended. Finally, the Magistrate Judge concluded that the fees awarded need not be reduced because they were disproportionate to the amount recovered in the action, because the amount of recovery was fixed by statute, the Plaintiff recovered the maximum amount allowable, and the statutes require the award of attorney fees. [[Id. at 21](#).] Based on these findings, Magistrate Judge Baughman recommends a total recovery to the Plaintiff of \$101,275 in fees and \$2,876.22 in costs. The parties have not objected. The Court **ADOPTS** Magistrate Judge Baughman's Report and Recommendation.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file any objections to a Report and Recommendation within ten days of service. [[Id.](#)] Failure to object within this time waives a party's right to appeal the magistrate judge's recommendation. [FED. R. CIV. P. 72\(a\)](#); *see also Thomas v. Arn*, 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate's report without review. *See Thomas*, 474 U.S. at 149. Moreover, having

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conducted its own review of the parties' briefs on the issue, the Court agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court adopts in whole Magistrate Judge Baughman's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **GRANTS** the Plaintiff's motion for an award of attorney fees and costs [Doc. [114-1](#)], as outlined in the Report and Recommendation [Doc. [118](#)].

IT IS SO ORDERED.

Dated: October 8, 2008

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE